

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1215 of 1997

With

Civil Application No. 3716 of 1997.

CORAM: J.N. BHATT AND JUSTICE H.R. SHELAT, JJ.

(Date of decision: 11/08/97)

ORAL ORDER (Per J.N. Bhatt, J.)

In this Appeal U/s 173 of the Motor Vehicles Act, 1988 the appellants original opponents have questioned legality and validity of the judgment and award recorded in Motor Accident Claim Petition No. 239 of 1994, by the Motor Accident Claims Tribunal, at Ahmedabad, awarding the amount of Rs. 2,59,940/- on account of premature and untimely demise of the scooterist arising out of a vehicular accident.

2. We have heard learned Advocate Mr. Parikh reasonably at good length. We would not like to reiterate all the facts heard during the course of the submissions and enumerated in the impugned judgment. However, skeleton projection of the facts leading to this appeal may shortly be narrated with a view to appreciate the merits of this appeal.

3. The accident took place, on 1-8-93, at about 4-00 p.m. near Rameshwar Society. On the date of the accident the deceased was going on his scooter No. GJJ 494. When he reached near Rameshwar Society at that time offending tractor-trailer bearing No. GJ-2-B-1288 came from behind rashly and negligently and dashed with the rear part of the scooterist as a result of which the scooter - rider fell down and he sustained serious injuries which ultimately took toll of his life. It was, therefore, the case of the respondents who are original applicants that the life of the deceased Abdulrahimbhai who was aged about 30 years was cut short on account of tortuous act of the driver of the tractor.

4. The deceased was running a workshop in the name and style of "Maheebub Engineering Works". He was doing job work of mill machinery spare parts. The deceased had passed I.T.I. Examination. Thus, he was, technically,

qualified to run the workshop. According to the case of the claimants who are parents, widow and minor sons of the deceased the business of engineering workshop was flourishing. The deceased was granted loan by the Gujarat State Financial Corporation for his business. Thus, the deceased was the main bread winner in the family. The claimants, therefore, claimed an amount of Rs. 5,00,000/(Rupees Five Lacs only) by way of compensation for premature and untimely death of the bread winner.

5. The original opponents appeared and resisted the claim made by the original claimants. The original opponents filed the written statement, at exh. 24, and the Insurance Co. filed its written statement, at exh. 32, inter alia contending that the driver of the tractor was not at all responsible for happening of the accident in question. On the contrary, it was pleaded that the accident occurred due to sole rashness and negligence on the part of the deceased which resulted into his death. The amount of compensation was also alternatively questioned.

6. The Tribunal after having analysing the evidence and considering the facts and circumstances emerging from the record held that the claimants have been able to prove that the accident occurred on account of rash and negligent driving on the part of the driver of the tractor. In short, the Tribunal reached to the finding of facts that death of the deceased was the outcome of rashness and negligence on the part of the driver of the tractor. In other words, it was found by the the Tribunal that the tractor dashed from behind the scooter of the deceased as a result of which the scooterist was thrown ahead of the tractor and fell down and the deceased, consequently, sustained serious injuries which proved fatal. The Tribunal also found that there was no contribution in happening of the accident as alternatively pleaded by the original opponents. Taking into account the evidence on record the Tribunal found that the loss of dependency would in any case come to about Rs. 2,39,940/- and the Tribunal also awarded the amount of Rs. 20,000/- towards loss of expectation of life. In all, the Tribunal has awarded Rs. 2,59,940/with interest and proportionate costs and held the opponents liable, vicariously, for rash and negligent driving of the tractor attached with the trailer.

7. Learned Advocate Mr. Parikh during the course of his submissions tried to convince us that the accident in question is not, successfully, proved by the claimants.

For that he submitted that the tractor was not involved in the accident. But the scooterist while overtaking on coming auto-rikshaw he lost control and dashed against the auto-riksha and there was road accident between the scooterist and the auto-riksha. This plea is rejected by the Tribunal and in our opinion rightly so.

8. We have gone through, dispassionately, the evidence the copies, whereof, have been supplied to us during the course of submissions. We have no hesitation in finding that the finding recorded by the Tribunal after making assessment of facts emerging from the record that sole negligence was on the part of the driver of the tractor attached with the trailer is justified. We have seen the copy of the sketch. We have read the panchanama and evidence of the relevant witnesses. Taking into account the nature and number of averments made in the panchanama, damage to the rear portion of the scooter, topographical situation emerging from the panchanama and evidence of the eye witness Ashokkumar which is rightly held to be believable and reliable by the Tribunal. The position emerging from the sketch and the panchanama, evidence and submissions about negligence on the part of the tractor driver it appears from the record that the tractor was proceeding from east to west. Like that it was proceeding towards National Highway and from eastern side like that Arbuda Society. Width of the road when the accident took place was 25 feet and there was 5 feet kaccha road on side of the road. Thus, there was total width of 30 feet at the time of vehicular accident. We have found from the evidence that the scooter was going ahead of the tractor and the finding of the Tribunal that the scooter was dashed from behind by the driver of the tractor and he was rash and negligent and was responsible for the accident and we confirm it. We have no slightest doubt in our mind that the entire contribution or accountability for happening of the unfortunate road accident which took toll of promising man who was running his engineering workshop is justified. We, therefore, confirm the finding with regard to negligence recorded by the Tribunal.

9. Obviously, that would lead us to appreciate the amount of compensation awarded by the Tribunal to the claimants who are parents, widow and minor children of the deceased. In case of fatal injury, the amount of compensation has to be assessed under three heads, (i) loss of dependency suffered by the claimants (ii) conventional amount for loss of expectation of life and (iii) other permissible and incidental expenses on account of premature death.

10. The Tribunal has considered all the relevant facts and circumstances and has assessed loss of dependency in other words loss of only utility of the deceased to the family to the extent of Rs.15,996/- per year. The deceased was running Mahebub Engineering Works and he was technically qualified for running the workshop. The bill-books of the business run in the name and style of Mahebub Engineering Works were produced. The father of the deceased has stated in his evidence that the deceased was earning Rs. 3000/- to Rs. 3,500/per month. However, taking into account overall picture emerging from the evidence the Tribunal has assessed monthly income of the deceased at Rs. 2,000/and has assessed loss of dependency after deducting 1/3 amount of Rs. 1333/- and yearly it assessed at Rs. 15,996/- and has adopted 15 years multipliers. In our opinion, the Tribunal could have considered even future rise in case of the deceased so as to award just and reasonable compensation. It is a well settled proposition of law that what was the income of the deceased at the unfortunate time when the accident took place, his age and what he would have earned in the later years of his life. It appears from the impugned judgment that the Tribunal has not considered the prospective earning of the deceased for the reasons not known to us. However, criticism that only utility of the deceased was assessed at Rs. 15,996/- which is, totally, meritless. The approach of the Tribunal in adopting 15 years multipliers as the deceased was 36 years of age (32 to 35) and having minor children, widow and old parents, in our opinion, the, Tribunal, has, rightly, adopted 15 years multipliers in the facts and circumstances of the case. With the result, the claimants would be entitled to an aggregate amount of Rs. 15,996/- x 15 = Rs. 2,39,940/. To add Rs. 20,000/- by way of conventional amount for loss of expectation of life is one of the requirements for making proper assessment. The Tribunal has, therefore, rightly awarded Rs. 20,000/- under this head. With the result, the amount of compensation came to Rs. 2,59,940/-.

11. After taking into consideration the facts and circumstances emerging from record copies, whereof, were supplied to us during the course of submissions and also detailed submissions if not marathon, we have no hesitation in finding that the impugned judgment and award of the Tribunal awarding Rs.2,59,940/- by way of compensation to the original claimants is just, reasonable and legal. We, therefore, confirm it while rejecting this First Appeal at the threshold.

12. Before parting with our attention is, rightly, drawn by learned Advocate Mr. Parikh about the manner and mode in which apportionment of the total amount of award is made and the directions are given with regard to disbursement and investment to the respective parties after apportionment of the amount. After taking into account the relevant facts and circumstances emerging from the record of this case and the age, extent of dependency on the income of the deceased, relationship of each applicant with the deceased, we are opinion that apportionment of the total amount of compensation with proportionate costs and interest after deducting requisite court fees amount shall be in the ratio of 10:10:20:15:15:15:15: respectively amongst the original claimants. In other words, the parents each would be entitled to remaining 10% of the total amount and each minor shall be entitled to 15% of the amount and remaining 20% shall go to the share of the widow. The amount of Rs. 5,000/out of the amount coming to the share of the applicant no. 1 the father shall be paid by Account Payee Cheque and the remaining amount shall be invested in Fixed Deposit in any Nationalised Bank for a period not less than 7 (seven) years, interest which shall occur periodically obviously shall be paid to the applicant. In case of the mother of the deceased claimant no. 2 the entire amount shall be invested on the same line as that of the applicant no. 1.

13. In so far as the amount of compensation coming to the share of each minor is concerned, shall be fully invested in any nationalised bank in Fixed Deposit Receipt or in any other better Government security where rate of interest is higher for a period not less than 10 years and the amount which shall occur periodically out of the amount coming to each of the claimant shall be paid to the guardian mother so that some amount of interest could be expended for welfare, betterment and upliftment of the minors. The amount coming to the share of the claimant no. 3 widow of the deceased shall be invested after giving an amount of Rs. 10,000/- towards expenses as observed herein before in any nationalised bank or in any other better Government security for a period not less than 10 years. Obviously, interest which shall occur shall be paid to the applicant no. 2 widow of the deceased.

14. The Tribunal is directed to see that an endorsement is made on the Fixed Deposit Receipts that the claimants or guardian of the minors shall not be entitled to create any charge or encumbrances on the

Fixed Deposit Receipts without prior approval of the Tribunal and shall also see that said endorsement is placed on the fixed deposit receipt of the concerned party with red ink so as to obviate future complication.

15. Amount of Rs. 25,000/- is deposited with the memo of appeal as per the provisions of Section 172 of the Motor Vehicles Act. It is, therefore, directed that the said amount of Rs. 25,000/- shall be transmitted to the Tribunal concerned forthwith so as to enable the Tribunal to pass orders with regard to disbursement and investment as observed hereinbefore.

16. Learned Advocate Mr. Parikh has, lastly, submitted that an execution petition is pending and sufficient time may be granted to pay up the awarded amount with costs and interest within reasonable time. This submission is accepted. Execution Petition No. 45/97 pending before the Tribunal concerned (City Civil Court, Ahmedabad (Court NO. 21) is ordered to be stayed for a period of six weeks during which the appellant insurer shall deposit the entire amount of compensation as payable under the impugned judgment and award before the Tribunal within a period of five weeks.

In view of the order passed in the main matter, no order is passed on Civil Application No. 3716 of 1997.

(J.N. Bhatt, J.)

(H.R. Shelat, J.)

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